

## **STATE'S MOTION TO INTRODUCE EVIDENCE OF THE VICTIM'S BODY**

Even though the defendant's confession was suppressed as involuntary, his later voluntary consent to take police to the victim's body dissipated the taint of the illegal confession, so the body should be admissible.

The State of Arizona, by and through undersigned counsel, requests this Court to admit evidence of the victim's body. The State's motion is based upon the following Memorandum of Points and Authorities.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **THE FACTS:**

On November 10, 1992, the Court of Appeals issued a Memorandum Decision upholding the suppression of the defendant's confession. The confession and the fruits of that confession -- the victim's body -- was suppressed based upon the defendant's illegal detention. The Court of Appeals, however, did leave open the question of attenuation of the taint concerning the fruits.

Based on this decision, the State now contends that the taint on the fruits of the confession was in fact attenuated by the defendant's subsequent voluntary consent to take the police detectives to the body.

#### **THE LAW:**

In *State v. Fortier*, 113 Ariz. 332, 553 P.2d. 1206 (1976), the Arizona Supreme Court held that the taint of an original illegal detention may be attenuated by a subsequent voluntary consent to search, such that the fruits of the voluntary consent search are not tainted by the original illegal search. The Court stated:

We find that the contraband in this case should not have been suppressed as a fruit of the improper highway stop:

That degree of attenuation which suffices to remove the taint from evidence obtained directly as a result of unlawful police conduct requires at least an intervening independent act by the defendant or a third party which breaks the causal chain linking the illegality and evidence in such a way that the evidence is not in fact obtained by exploitation of that illegality. Consent by the defendant, if sufficiently an act of free will to purge the primary taint of the unlawful (arrest), may produce the requisite degree of attenuation.

*State v. Fortier*, 113 Ariz. 332, 335, 553 P.2d 1206, 1209 (1976), quoting *People v. Seeslin*, 68 Cal.2d 418, 428, 67 Cal.Rptr. 409, 416, 439 P.2d 321, 328 (1968), *cert. Denied*, 393 U.S. 1080 (1969) [internal quotation marks and citations omitted].

In a more recent decision, *State v. Blackmore*, 186 Ariz. 630, 925 P.2d 1347 (1996), the Arizona Supreme Court reversed a Court of Appeals decision that held the defendant's detention to be illegal. After a burglary, police observed Blackmore hiding in the adjacent alley. The officer drew his gun and ordered Blackmore to lie on the ground, handcuffed him, and placed in his police car. When a backup officer arrived, the arresting officer informed Blackmore he was being held for investigatory detention and asked for identification. Blackmore consented to the officer's obtaining identification from inside his car, which led to the discovery of inculpatory evidence.

The Arizona Supreme Court held the defendant was only detained and not under arrest. The Court further held that even if the defendant's detention was a *de facto* arrest without probable cause, any taint from the illegal arrest was purged by Blackmore's voluntary consent to the search of his car.

Case law has held evidence may be "sufficiently distinguishable to be purged of the primary taint" if "the causal connection between [the] illegal police conduct and the

procurement of [the] evidence” is “so attenuated as to dissipate the taint of the illegal action.” *State v. Liss*, 103 F.3d 617, 620 (7th Cir. 1997), quoting *United States v. Fazio*, 914 F.2d 950, 957 (7th Cir. 1990).

Generally, the attenuation doctrine is used to support the admission of evidence in three general situations. These include (1) the admission of a voluntary confession obtained after an illegal arrest, *Brown v. Illinois*, 422 U.S. 590, 604, 95 S.Ct. 2254, 2262, 45 L.Ed.2d 416 (1975); (2) the admission of evidence obtained during consensual searches following an illegal seizure, *United States v. Valencia*, 913 F.2d 378, 382 (7th Cir. 1990); *Fortier, supra*; *Blackmore, supra*; and (3) admission of a voluntary confessions given after a *Miranda* violation. *Oregon v. Elstad*, 470 U.S. 298, 310, 105 S.Ct. 1285, 1293, 84 L.Ed.2d 222 (1985). The attenuation doctrine also allows the admission of a witness’s testimony at trial when the identity of the witness was discovered during an unlawful arrest.

Here, even though the Court of Appeals has held the police misconduct was flagrant, that by itself is not dispositive on the question of taint. *United States v. Fazio*, 914 F.2d 950, 958 (7th Cir. 1990); *United States v. Green*, 111 F.3d. 515, at 521 (7th Cir. 1997). Rather, the Court should look to the totality of the circumstances in rendering its opinion.

Here, probable cause was established shortly after defendant was under *de facto* arrest. The codefendant confessed and inculpated the defendant. Immediately, the defendant was given adult *Miranda* warnings. After interrogating the other codefendant, the detectives were informed that the defendant was a juvenile. Interrogation stopped and the defendant was given juvenile *Miranda* warnings. After the interrogation ended,

the defendant agreed to take the detectives to the location of the body. The defendant admitted his culpability and was well aware that the other codefendants could lead the detectives to the scene. This evidence supports the State's position that the defendant's consent was voluntary.

This Court is left with the duty to determine whether the defendant's subsequent consent was voluntary. *Fortier, supra*; *Blackmore, supra*. This issue was neither raised nor addressed by the Court of Appeals and was left to the discretion of this Court.

The State therefore requests an evidentiary hearing. If the consent is determined to be voluntary, then the fruits of defendant's illegal arrest are attenuated and the victim's body will be admissible at trial.